



STATE OF NEW JERSEY

In the Matter of Ignacio Ramirez,
Correctional Police Officer (S9999A),
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2021-1558

List Removal Appeal

ISSUED: JULY 26, 2021 (SLK)

Ignacio Ramirez appeals the decision to remove his name from Correctional Police Officer (S9999A), Department of Corrections eligible list on the basis of an unsatisfactory driving record and unsatisfactory employment record.

The appellant took the open competitive examination for Correctional Police Officer (S9999A), Department of Corrections, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. His name was certified (S20A01) and he was ranked as the 210th candidate. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory driving record as he had two convictions for operating a motor vehicle under the influence (DUI). The appellant was first arrested on June 12, 2008 while attempting to gain access to Fort Bragg, North Carolina and was found to have a blood alcohol content (BAC) of .16% which was twice the legal limit under the Military Justice Code and North Carolina law. Additionally, the appellant was arrested by the Buena Police Department on July 12, 2015 and charged with DUI.

The appointing authority also indicated that the appellant has an unsatisfactory employment record as he received counseling for four separate instances of time and attendance related incidents while in the Army, which led to him being issued a Memorandum of Reprimand. It indicates that the appellant only

stated on his application one instance of time and attendance related issues while serving in the Army. Further, the appointing authority presents that the appellant received disciplinary action for the June 2008 and time and attendance issues.

On appeal, the appellant acknowledges that his driving record is unsatisfactory. However, he presents that he paid all his tickets and served his probation, including being released early from probation due to good conduct. The appellant emphasizes that these are the only two major incidents that he had with the law and indicated these incidents on his application.

Concerning his employment record, the appellant states that he has continuously worked since age 18, never collecting unemployment insurance because he always maintained a job. He presents that he stated on his application that he was disciplined and discharged from the Army due to his first driving under the influence. The appellant argues that four no-shows out of 16 years of working to provide for his family does not indicate that his employment history is unsatisfactory. He states that the appointing authority did not fully investigate his employment with his most recent employer, the Cumberland County Department of Corrections (CCDOC), where he maintained a Civil Service position for nine years. The appellant emphasizes that there are no suspensions in his record from his employment with CCDOC.

In response, the appointing authority reiterates that the appellant was discharged from the military on or around June 12, 2008 due to a DUI, he had a BAC of .16% and was sentenced to 12 months of probation, 24 hours of community service, substance abuse assessment and a \$10 special assessment by the United States District Court. Additionally, on June 30, 2008, the appellant failed to report accountability formation and was issued a counseling form. He reported to his superior that he overslept. On August 7, 2008, he failed to report to accountability formation for the third time and was issued a counseling form. When his superiors were finally able to contact him, he reported that he overslept. On August 21, 2008, the appellant failed to report to accountability formation for the fourth time in 90 days. When his superior could not contact him by telephone, he came to his room, found that he stumbled to the door, was drunk and smelled of alcohol, and had empty beer bottles everywhere despite receiving a DUI in June 2008 and graduating from the Army Substance Abuse Program for his drinking problem. Therefore, it was recommended that appellant be separated from military service.

Additionally, the appellant was stopped for speeding and running stops signs by the Buena Police Department of July 12, 2015, which resulted in him being issued driving while intoxicated, reckless driving, careless driving, open containers in motor vehicle, unlicensed driver and failure to yield and stop summonses. This led to the appellant being arrested and charged with driving under the influence. Further, while working for CCDOC, the appellant received a reprimand for being 33 minutes

late on January 3, 2018 and on April 4, 2018 for failing to provide proper documentation as required by the department's sick leave policy.

Moreover, in response to being asked on his application if he was ever charged with an offense which resulted in a military trial, he responded that he had one no show to formation and impaired driving. Also, in response to a question asking if he had ever been questioned by the police he responded that he had a DUI in 2015 and a reckless driving in 2008. The appointing authority asserts that it is concerning that the appellant was less than forthright in answering his questions related to his military service, employment history and DUI convictions. It argues that the appellant's history demonstrates "red flags" and it removed him for two or more DUIs, failure to disclose all requested information on his application, and an unacceptable employment history that includes discipline and attendance issues that are inconsistent with a law enforcement officer.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Civil Service Commission (Commission) to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for having a prior employment history which relates adversely to the title.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket

No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, concerning the appellant's driving record, the record indicates that he had DUIs in June 2008 and July 2015. Therefore, the Commission finds that the appellant had an unsatisfactory driving record as his last DUI was approximately four years prior to the August 31, 2019 subject examination closing date and there was insufficient time for him to demonstrate rehabilitation.

Regarding the appellant's employment history, the record indicates that the appellant had four failed to report accountability formation within a 90-day period while serving in the Army in the summer of 2008, which, along with the above DUI, led to his discharge from the Army. Additionally, the record indicates that while working for CCDOC, the appellant received a reprimand in January 2018 for lateness and in April 2018 for failing to provide proper documentation under the sick leave policy. Therefore, as the appellant's latest employment infractions were within two years of the subject closing date, the record does not indicate that he sufficiently rehabilitated his employment record by the closing date.

Moreover, the appellant indicated that he had one failed to report accountability formation on his application when there were four such incidents. Therefore, even if there was no intent to deceive, considering the appellant's driving and employment record, his failure to disclose all four was material. At minimum, the appointing authority needed this information to have a complete understanding of his background to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). Therefore, in reviewing the totality of the appellant's background, it was appropriate for the appointing authority to remove his name from the subject list based an unsatisfactory employment and driving record as well as falsification.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21ST DAY OF JULY, 2021

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